Filed 3/27/09 Marriage of Kaufman CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re the Marriage of ETTIE R. and KENNETH R. KAUFMAN.	B196632 (Los Angeles County Super. Ct. No. BD092870)
ETTIE R. KAUFMAN, Appellant, v. KENNETH R. KAUFMAN, Respondent.	

APPEAL from an order of the Superior Court of Los Angeles County, Scott M. Gordon, Judge. Affirmed.

Ettie Rosenberg, in pro. per., for Appellant.

Harris Ginsberg, Suzanne Harris; Trope and Trope and Thomas Paine Dunlap for Respondent.

Ettie R. Kaufman appeals from an order denying her request for reimbursement from her former husband for their children's uninsured medical expenses. She also appeals the sanction requiring her to pay her former husband's attorney fees in the amount of $15,000.

We find no error and affirm the order in full.

FACTUAL AND PROCEDURAL SUMMARY

Ettie Kaufman and Kenneth Kaufman married in 1979.[1] The parties separated in 1992 and a judgment of dissolution of marriage regarding status only was entered March 25, 1996. A further judgment on the reserved issue of support was filed March 26, 1996, and a further judgment on the reserved issue of the division of community property was filed April 25, 1997.

The parties have four children, all of whom were adults by the time the order presently appealed was filed. While the children were minors, Ettie had sole legal custody and primary physical custody. Kenneth was entitled to five percent visitation with the children.

The 1996 further judgment ordered Kenneth to pay Ettie $6,000 per month in family support. The judgment specified that family support was to continue until "death of either party, remarriage of [Ettie], or further order of Court." Kenneth was also ordered to maintain health insurance coverage for the children. Uninsured medical costs for the children were to be borne equally by the parties. (The order regarding medical costs is discussed in more detail below.)

In 2001, Ettie participated in a religious wedding ceremony with an Allan Lowy. The ceremony involved signing a Jewish wedding contract, and after the ceremony the couple lived together and held themselves out to friends and family as married. The couple did not obtain a marriage license from the State of California, however. Ettie explained that they did not become legally married because she had filed for bankruptcy following her divorce from Kenneth, and the couple was concerned that her past financial

---

[1] Ettie Kaufman sometimes appears in the record as Ettie Rosenberg. As is customary in family law cases, we will refer to the parties by their first names.

difficulties would negatively impact Lowy. In 2002, Kenneth filed an order to show cause to terminate support. Kenneth subsequently took the matter off the court's calendar.

On February 21, 2006, Kenneth again filed an order to show cause. He requested the court terminate family support and order him to pay guideline support for the one child who was then still a minor. He also requested reimbursement for family support paid after Ettie's remarriage. Ettie then filed an order to show cause requesting that the court reduce to a sum certain and order payment of the amount owed by Kenneth as reimbursement for uninsured medical costs for the children. She also requested attorney fees and costs. Kenneth subsequently filed another order to show cause requesting Ettie be ordered to pay his attorney fees and costs.

The trial court decided the motions on the basis of declarations and letter briefs. Apparently no live testimony was taken.[2] In a written statement of decision as to all three orders to show cause, the trial court ruled in favor of Kenneth on the termination of family support, though it only ordered Ettie to reimburse him for support paid after the 2006 order to show cause was filed. The trial court denied Ettie's request for reimbursement of the children's uninsured medical costs. Ettie's request for attorney fees was not granted; Kenneth's request was granted as sanctions under Family Code section 271 in an amount less than requested.[3]

Ettie filed a motion to set aside and vacate the court's order and a motion for new trial. Both motions were denied. This timely appeal follows. Ettie does not challenge the termination of family support, only the denial of her reimbursement request and the attorney fees sanction.

---

[2] We are unable to locate in the record any pronouncement by the trial court that the matter would be decided on declarations alone. (Ettie chose not to designate a reporter's transcript on appeal.) Nonetheless, both parties agree that no live testimony was presented, so we proceed on the assumption that the matter was, in fact, decided on declarations only.

[3] All further statutory references are to the Family Code unless otherwise indicated.

DISCUSSION

I

Ettie first raises two procedural issues regarding the trial court's handling of this matter. She contends the trial committed reversible error by requiring the matter be submitted on declarations and letter briefs alone, and she challenges certain rulings regarding the admissibility of evidence.

A

Ettie contends the trial court failed to comply with the statutes governing evidence and civil procedure, and denied her due process, by deciding the matter on sworn declarations alone rather than live testimony.[4] She relies heavily on *Elkins*, in which the Supreme Court held that a marital dissolution trial may not be conducted by declaration. Kenneth responds that Ettie has forfeited this issue by failing to object in the trial court, and that, in any event, the proceedings involved postjudgment motions, which the trial court is statutorily authorized to decide on the basis of declarations alone.

Ettie does not point to any place in the record where she objected to having the matter decided on declarations. In the absence of an objection in the trial court, the claim of error is forfeited. (See *In re Marriage of Drake* (1997) 53 Cal.App.4th 1139, 1150, fn. 4.) In any event, we conclude the trial court did not abuse its discretion by disallowing live testimony.

Unlike *Elkins*, the orders from which Ettie appeals were not made after a dissolution trial. Instead, the orders at issue in this case were made after each party filed orders to show cause. *Elkins* involved a challenge to a local superior court rule requiring that parties present their case in dissolution trials by means of written declarations. (*Id*. at p. 1344.) Our Supreme Court concluded the rule was inconsistent with section 210, which provides that "'the rules of practice and procedure applicable to civil actions

---

[4] Ettie cites to *Elkins v. Superior Court* (2007) 41 Cal.4th 1337 (*Elkins*), in support of her argument that the procedure below did not comport with due process. *Elkins*, however, did not reach the constitutional question, but rested on statutory grounds. (*Id*. at p. 1357.) Because Ettie limits the scope of her analysis to that offered by *Elkins*, we do the same.

generally . . . apply to, and constitute the rules of practice and procedure in, proceedings under [the Family Code].'" (*Elkins*, at p. 1354.) Because the rules governing civil actions disallow the use of declarations at trial as inadmissible hearsay (subject to statutory exceptions), the use of declarations at dissolution trials must be subject to the same limitation. (*Id*. at p. 1344.)

One of the statutory exceptions to the inadmissibility of declarations as hearsay is found in Code of Civil Procedure section 2009, which provides, "An affidavit may be used to verify a pleading or a paper in a special proceeding, to prove the service of a summons, notice, or other paper in an action or special proceeding, to obtain a provisional remedy, the examination of a witness, or a stay of proceedings, and in uncontested proceedings to establish a record of birth, or *upon a motion*, and in any other case expressly permitted by statute."[5] (Italics added.) "A motion is defined in Code of Civil Procedure section 1003. That section states: 'Every direction of a court or judge, made or entered in writing, and not included in a judgment, is denominated an order. An application for an order is a motion.' 'An order to show cause is a notice of motion and a citation to the party to appear at a stated time and place to show cause why a motion should not be granted.'" (*Reifler v. Superior Court* (1974) 39 Cal.App.3d 479, 483.) In sum, "Section 2009 of the Code of Civil Procedure accords trial courts discretion to determine an order to show cause upon declarations alone, and to exclude or admit oral testimony." (*In re Marriage of Drake*, *supra*, 53 Cal.App.4th at p. 1150, fn. 4.)

Despite Ettie's extensive discussion of *Elkins*, she ignores the distinction drawn by the *Elkins* court between a trial leading to a judgment and a hearing on a postjudgment motion. (*Elkins*, *supra*, 41 Cal.4th at p. 1363.) With respect to Ettie and Kenneth's marriage, the judgment of dissolution and further judgments on reserved issues were rendered in 1996 and 1997. All of the present matters before the trial court—Kenneth's February 21, 2006 order to show cause regarding support modification, Ettie's May 31, 2006 order to show cause regarding monies due and attorney fees, and Kenneth's July 10,

---

[5] "An affidavit is a written declaration under oath, made without notice to the adverse party." (Code Civ. Proc., § 2003.)

2006 order to show cause regarding attorney fees—were postjudgment motions. Accordingly, the trial court had discretion under Code of Civil Procedure section 2009 to determine the orders to show cause on declarations alone.

As previously noted, we are unable to locate in the record the trial court's ruling that the matter would be decided on declarations alone. Similarly, the record does not reveal why the trial court decided to proceed in that manner. On a silent record, we will not assume that the trial court failed to exercise its discretion or abused its discretion. (See *Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043, 1051, fn. 9 ["[T]he appellant has the burden of affirmatively demonstrating error by providing an adequate record."].) We conclude the trial court acted within its discretion to decide the matter on declarations alone.

B

Ettie contends the trial court erred in sustaining certain objections by Kenneth to statements in her declaration.[6]

In support of her order to show cause regarding monies due, Ettie submitted a declaration dated July 25, 2006. The trial court sustained Kenneth's objection on the grounds of relevance and lack of foundation to the statement, "As early as April 1994, I was awarded sole legal custody of the children and specific findings were made that I could continue in my role as sole legal custodian to arrange for any psychotherapy for the children with any psychotherapist of my choosing." The trial court also sustained Kenneth's objection on the ground of relevance to the statement, "See, ¶F, April 13, 1994 Statement of Decision, a true and correct copy of which is attached hereto [as] Exhibit

---

[6] In the introductory portion of her brief, Ettie asserts that the trial court made a number of erroneous rulings on objections to statements in various declarations. The only legal argument she offers, however, pertains to the rulings on two of Kenneth's objections to statements contained in Ettie's declaration dated July 25, 2006. Accordingly, we consider her other contentions waived. (See *Niko v. Foreman* (2006) 144 Cal.App.4th 344, 368 ["'An appellate brief "should contain a legal argument with citation of authorities on the points made. If none is furnished on a particular point, the court may treat it as waived, and pass it without consideration."'"].)

'A' and incorporated herein by reference." Ettie contends these statements, and the referenced April 13, 1994 statement of decision, are relevant because her sole legal custody is material to the issue of her entitlement to reimbursement for medical costs.

"'Broadly speaking, an appellate court applies the abuse of discretion standard of review to any ruling by a trial court on the admissibility of evidence. [Citations.] Speaking more particularly, it examines for abuse of discretion a decision on admissibility that turns on the relevance of the evidence in question. [Citations.] That is because it so examines the underlying determination as to relevance itself.'" (*City of Ripon v. Sweetin* (2002) 100 Cal.App.4th 887, 900.)

Evidence must be relevant to be admissible. (Evid. Code, § 350.) "'Relevant evidence' means evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action." (Evid. Code, § 210.)

As we shall explain in our discussion of Ettie's reimbursement request, the dispositive issue is whether Ettie carried her burden to produce evidence that the costs incurred were not elective. This determination does not turn on whether Ettie had the legal right to make unilateral medical decisions. (See § 3006 ["'Sole legal custody' means that one parent shall have the right and the responsibility to make the decisions relating to the health, education, and welfare of a child."].) Kenneth does not dispute that Ettie had the legal right to take the children to the medical providers of her choosing and to seek medical treatment for the children without consulting him. Ettie's right to obtain services for the children as their sole legal custodian and Kenneth's obligation to pay for those services are two separate issues. The trial court did not err in recognizing that the issues were separate and excluding evidence regarding custody accordingly.

Were we to assume for the sake of argument that evidence of Ettie's sole legal custody of the children was excluded in error, the error would not require reversal in this case. Without a showing that, but for the error, a different result would probably have occurred, erroneous exclusion of evidence does not require reversal. (See Code Civ. Proc., § 475.) Ettie has not shown that evidence of her sole legal custody would have

probably led the trial court to conclude that the services obtained for the children were not elective.

II

Ettie contends the trial court abused its discretion by denying her request for reimbursement for half of the children's uninsured medical expenses.

The duties of the respective parties with regard to the children's medical expenses are set forth in the 1996 and 1997 further judgments. As to allocation of medical expenses for the children, the 1996 further judgment provides: "[Kenneth] shall maintain medical, hospitalization, and dental insurance (hereafter collectively referred to as the 'Medical Insurance') for the benefit of each of the Minor Children for so long as [Kenneth] is obligated to pay family support to [Ettie]. [Kenneth] represents that said Medical Insurance will cover the majority of the ordinary medical, dental, orthodontic and psychological costs of the Minor Children so long as [Ettie] uses providers covered by said Medical Insurance. [Ettie] shall be required to use plan providers, if possible, for the medical, dental, orthodontic and psychological care of the Minor Children. It is contemplated that the vast majority of the Minor Children's extraordinary medical expenses will be covered by the Medical Insurance and that there will only be minimal out-of-pocket extraordinary medical expenses, including psychological/psychiatric expenses, incurred for the benefit of the Minor Children for which [Ettie] will be responsible. . . . [¶] . . . [Ettie] and [Kenneth] shall each pay one-half of all unreimbursed ordinary medical, dental, and orthodonture costs, as well as the unreimbursed emergency costs of the Minor Children for so long as [Kenneth] is obligated to pay family support to [Ettie]. Neither party shall be responsible to pay the unreimbursed medical costs of the Minor Children arising from <u>elective procedures</u> unless otherwise specifically agreed to by the parties, in which event said costs shall be shared by the parties pursuant to their mutual agreement."

The 1997 further judgment resolved issues that had arisen between the parties with respect to reimbursement for the children's medical expenses and declared that Kenneth was current on his obligation for medical costs incurred through April 18, 1997. The

judgment reiterated that Kenneth had a "continuing obligation to pay for certain uninsured medical expenses for the minor children, as set forth in the Further Judgment on the Reserved Issues [*sic*] of Support entered by the court on March 26, 1996." The 1997 further judgment also added a new term regarding reimbursement for the children's medical costs: "[Ettie] shall in the future provide [Kenneth] with copies of bills or statements for any unreimbursed ordinary medical, dental, and orthodonture costs, as well as unreimbursed emergency costs, within thirty (30) days of her receipt of such bills or statements."

On May 31, 2006, Ettie filed an order to show cause requesting "Reduction of Monies Due to Sum Certain." She also submitted a declaration alleging that Kenneth had not paid his share of uninsured medical expenses after April 18, 1997, and that he consequently owed half of the $93,769.80 that she had spent out-of-pocket for medical costs and therapy for the children since that date. Kenneth's reply declaration alleged that Ettie had not previously sought reimbursement for uncovered medical expenses, nor had she made him aware that such expenses existed. In a separate declaration, Kenneth alleged that many of the expenses Ettie sought to have reimbursed were educational, not medical, and that many of the arguably medical expenses were for elective treatments, which he had not agreed to share as provided for in the 1996 further judgment.

The trial court denied Ettie's request for reimbursement in its entirety. In a statement of decision, the court explained: "[Ettie] requests [Kenneth] pay her $96,713.55[7] as reimbursements for medical costs, tutors, and therapy. According to

---

[7] Ettie points out that this sum differs from the total amount of uninsured costs calculated in the declaration accompanying her order to show cause. She also points out that she was only requesting reimbursement from Kenneth for half of the total uninsured cost, as provided for in the 1996 further judgment. We disagree with Ettie's assertion that these discrepancies show the trial court acted arbitrarily or capriciously in reaching its decision. Ettie asked the trial court to reduce the amount owed to a "sum certain," so it is unremarkable that the trial court concluded the uninsured costs amounted to a sum different from that calculated by Ettie. And while the trial court may have been mistaken about whether Ettie was seeking reimbursement for the entire uninsured amount or only

[Ettie], these costs were incurred on behalf of the children between 1999 and 2006. [Ettie] has provided no evidence that she made [Kenneth] aware of these obligations as provided within the Judgment and provided for by Family Code §4063. [Kenneth] provides testimony that not only has he never received any notice or request for payment of any of the requested costs, but that he has in fact been refused any information regarding the children's medical conditions and treatments by [Ettie]. [¶] The minors in this matter are all now adults. The costs for which reimbursements are request[ed] have been incurred since 1999. No evidence has been offered by [Ettie] to indicate that the costs incurred were necessary as opposed to elective services and no evidence has been provided that indicates that [Ettie] provided [Kenneth] with any notice of the costs pursuant to the terms of the judgment. [¶] . . . [¶] . . . [Ettie's] request[ed] reimbursements are denied as she has not complied with the terms of the parties' stipulated judgment."

As a preliminary matter, Ettie's opening brief mischaracterizes the basis for the trial court's denial of her reimbursement request. Ettie claims, "The Court denied all of Appellant's claims for reimbursements on grounds that Respondent was not part of the decision making process regarding the services provided to the children." As may be seen from the portion of the statement of decision quoted above, Kenneth's exclusion from the decision making process was not the basis from the trial court's ruling. Ettie presumably refers to a portion of the statement of decision in which the court stated, "The terms of the agreement . . . provide protection for each of the parties. They insure that the party who has incurred the costs will receive reimbursement in a timely and predictable manner. It [*sic*] also provides the paying party with the ability to be involved in the decision making process regarding the necessity and appropriateness of the services and to make timely inquiry regarding the appropriateness and legitimacy of the costs." This reference to Kenneth's involvement in the decision making process likely refers to his right to agree or not agree to pay for elective procedures, since this was one of the

---

half, this is unrelated to the grounds on which her request was denied, as we shall explain.

grounds on which the trial court based its decision. Even if the trial court was overstating Kenneth's role with regard to medical decisions, however, this was not one of the court's stated grounds for denying reimbursement. Rather, the trial court's ruling was based on Ettie's failure to comply with the timely notification requirement in the 1997 judgment and the absence of evidence that the services provided were not elective.

Kenneth had no obligation to reimburse Ettie for elective procedures unless he had specifically agreed to do so. Because the 1996 further judgment ordered Kenneth to pay "one-half of all unreimbursed ordinary medical, dental, and orthodonture costs [and] unreimbursed emergency costs" only, any other services provided, including educational services and psychotherapy,[8] were elective for the purposes of Kenneth's reimbursement obligation. Consequently, a threshold question for the trial court was whether the costs Ettie sought to have reimbursed were for elective procedures. The trial court found Ettie had not produced sufficient evidence to support a finding that the costs were incurred for nonelective services.

The amount of child support owed is committed to the sound discretion of the trial court, within the limits authorized by statute or rule. (*In re Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 282-283.) To the extent that the determination involves findings of fact, our review is limited to determining whether the trial court's findings are supported by substantial evidence. (*In re Marriage of Heiner* (2006) 136 Cal.App.4th 1514, 1520.)

---

[8] Although psychological costs may be subsumed within medical costs in other contexts, the 1996 further judgment treated them as a separate category, as evidenced by the provision that Kenneth would provide insurance to cover "ordinary *medical*, dental, orthodontic *and psychological* costs" of the children. (Italics added.) The 1996 further judgment anticipated "that there will only be minimal out-of-pocket extraordinary medical expenses, including psychological/psychiatric expenses, incurred for the benefit of the Minor Children for which [Ettie] will be responsible." That Kenneth was expected to provide insurance to cover psychological costs, but not required to pay uninsured psychological expenses is also apparent in the 1997 further judgment which required Ettie to provide Kenneth "copies of bills or statements for any unreimbursed ordinary medical, dental, and orthodonture costs" within 30 days, but made no mention of bills for psychological costs.

We conclude substantial evidence supports the trial court's finding. The evidence before the trial court regarding the nature of the costs incurred included Ettie's declaration and invoices for services provided. When she moved to set aside the judgment, Ettie submitted voluminous documentation regarding the diagnosis and treatment of her sons' learning disabilities, however it appears that this evidence was not before the court at the time that it ruled on the order to show cause regarding reimbursement.

Ettie's declaration identified $69,182.50 of the costs as having been incurred for "therapy." She further breaks down that amount into services from tutors and learning centers. Although Ettie claimed these educational services were medically necessary, the trial court was not obligated to accept her characterization. To explain the remaining $24,587.30, Ettie attached to her declaration a spreadsheet showing the child for whom each expense was incurred, the name of the service provider, and the insured and uninsured amounts. Assuming the trial court found this to be credible evidence, it is insufficient to support a factual finding about the nature of the service provided. The mere assertion that a service was provided by a doctor does not answer the question of whether the service was elective for the purpose of Kenneth's child support obligation.

Although not articulated as such, Ettie's challenge to the trial court's finding may be broken down into three arguments as to why the services were not elective: 1. they were prescribed by doctors; 2. medical insurance provided partial coverage for some services, rendering them presumptively medically necessary; and 3. educational and speech therapy are not elective when the parents are "high achievers."

It is unclear to what extent Ettie raised these arguments in the trial court, and Ettie's briefing of the reimbursement issue fails to take into account the deferential standard of review applicable to the trial court's factual findings. Nonetheless, we briefly address the first argument, to the extent it may be construed as a challenge to the sufficiency of the evidence. Ettie argues that if a doctor determines a procedure is medically necessary, it cannot be elective. In support of this assertion, she cites to cases decided in the context of health insurance benefits. None of these cases stands for the

proposition that a doctor's recommendation renders a procedure nonelective as a matter of law in the context of child support. (See *Palmer v. Superior Court* (2002) 103 Cal.App.4th 953; *Penoyer v. Guardian Life Insurance Co. of America* (1990) 562 N.Y.S.2d 281; *Carmouche v. CNA Insurance Companies* (1988) 535 So.2d 1279; *Van Vactor v. Blue Cross Assn.* (Ill.App. 1977) 365 N.E.2d 638; *Mount Sinai Hospital v. Zorek* (1966) 271 N.Y.S.2d 1012.)

We decline to address Ettie's arguments regarding "high achieving" parents or the purported presumption of medical necessity for services covered in part by medical insurance. Both issues are raised by means of argument, unsupported by any citation to the record or authority. (See *Mansell v. Board of Administration* (1994) 30 Cal.App.4th 539, 545.)

We conclude the trial court's finding that Ettie did not meet her burden to show the costs incurred were for nonelective services is supported by substantial evidence. Consequently, we need not address the timeliness of Ettie's reimbursement request, which was the trial court's other ground for denying reimbursement.

III

Ettie contends the trial court's award of attorney fees to Kenneth should be reversed, and asks that we order Kenneth to pay her attorney fees instead.

Kenneth requested attorney fees in the amount of $42,000. The trial court granted him fees in the lesser amount of $15,000, payable in monthly installments of $500. The court stated that it was making the award pursuant to section 271, which authorizes an award of attorney fees as a sanction against the party ordered to pay.[9] Although the

---

[9] "(a) Notwithstanding any other provision of this code, the court may base an award of attorney's fees and costs on the extent to which the conduct of each party or attorney furthers or frustrates the policy of the law to promote settlement of litigation and, where possible, to reduce the cost of litigation by encouraging cooperation between the parties and attorneys. An award of attorney's fees and costs pursuant to this section is in the nature of a sanction. In making an award pursuant to this section, the court shall take into consideration all evidence concerning the parties' incomes, assets, and liabilities. The court shall not impose a sanction pursuant to this section that imposes an unreasonable financial burden on the party against whom the sanction is imposed. In

statement of decision does not say so in so many words, it appears that the trial court concluded Ettie was not acting in good faith when she opposed Kenneth's motion to terminate family support. After setting forth the criteria for an award under section 271, the statement of decision reads, "In this matter, [Ettie], an attorney, 'married' Mr. Allan Lowy in a very public religious marriage ceremony. They live as husband and wife and have held themselves out to the public as a married couple. The evidence shows that the only reasons that they did not obtain a marriage license were economic and it appears in an effort to retain the support award in this case."

"'A sanction order under . . . section 271 is reviewed under the abuse of discretion standard. "'[T]he trial court's order will be overturned only if, considering all the evidence viewed most favorably in support of its order, no judge could reasonably make the order.'"' [Citation.] 'In reviewing such an award, we must indulge all reasonable inferences to uphold the court's order.'" (*In re Marriage of Feldman* (2007) 153 Cal.App.4th 1470, 1478.) To the extent that section 271's hearing requirement is at issue, the question is one of statutory interpretation and requires de novo review. (*In re Marriage of Petropoulos* (2001) 91 Cal.App.4th 161, 177.)

Ettie does not contend she was given inadequate notice of the proposed sanction, however she reiterates her contention that she was denied a fair hearing due to the matter being submitted on declarations only. Although section 271 requires that a party facing sanctions be given an opportunity to be heard, it does not specify the format for such a hearing. If the appellant is given an opportunity to submit declarations, but not live testimony, the hearing requirement of section 271 is satisfied: "Section 271 does not specify the nature of the hearing it contemplates. We observe, however, that the opportunity to be heard does not necessarily compel an oral hearing. [Citations.] 'California courts have concluded that use of the terms "heard" or "hearing" does not

---

order to obtain an award under this section, the party requesting an award of attorney's fees and costs is not required to demonstrate any financial need for the award. [¶] (b) An award of attorney's fees and costs as a sanction pursuant to this section shall be imposed only after notice to the party against whom the sanction is proposed to be imposed and opportunity for that party to be heard." (§ 271, subds. (a) & (b).)

require an opportunity for an oral presentation, unless the context or other language indicates a contrary intent.' . . . '[T]he scope of a hearing on an application for sanctions is within the trial court's discretion, as with motions generally.'" *(In re Marriage of Petropoulos*, *supra*, 91 Cal.App.4th at pp. 178-179.)

Notably, Ettie does not argue that the hearing requirement in section 271 entitles her to greater procedural protection with regard to sanctions than she is entitled to with regard to the other orders to show cause. Furthermore, as discussed above, Ettie does not identify any place in the record where she objected to proceeding by declaration or requested live testimony. Consequently, even if an argument could be made that section 271 requires a hearing that includes live testimony, Ettie has forfeited the opportunity to make it. *In re Marriage of Petropoulos*, *supra*, 91 Cal.App.4th at pages 178-179, is apposite: "[W]e need not decide here whether a separate oral hearing is required before sanctions are imposed under section 271, for we conclude that Wife waived such a hearing in this case. In reaching that conclusion, we note first the lack of any evidence in the record that Wife requested a separate hearing on the sanction issue. We also note Wife's apparent acquiescence in the trial court's briefing schedule for written submission of the fee issue. . . . Under the circumstances, she has waived any objection she may have had on that ground." (*Id*. at p. 179.) Unlike the appellant in *Petropoulos*, Ettie did move for a new trial on the issue of attorney fees; however, the motion did not raise the question whether submission on declarations alone satisfied the hearing requirement in section 271.

Ettie next contends the trial court's decision regarding sanctions is unsupported by the evidence, and therefore an abuse of discretion. We disagree. The trial court received evidence that Ettie continued to receive family support, which went beyond child support, for approximately five years after participating in a religious wedding ceremony with Lowy. The trial court also received evidence that Ettie lived with Lowy after the ceremony, that she and Lowy held themselves out as a married couple such that many friends and family members were unaware the marriage was not legal, and that Lowy provided Ettie significant financial support. Ettie argues that the support from Lowy was

in the form of loans, however the trial court explicitly rejected Ettie's declaration on that point as not credible, and we will not reweigh the trial court's credibility determination. (*Niko v. Foreman*, *supra*, 144 Cal.App.4th at p. 365.) Furthermore, by the time Kenneth filed the order to show cause to terminate family support, only one of the couple's children was still a minor, and Kenneth asked the court to order guideline support as to that child.

On the basis of this evidence, the trial court could have concluded that Ettie's opposition to the order to show cause regarding termination of family support was not undertaken in good faith. The trial court awarded significantly less than the amount Kenneth requested for attorney fees. This limited award is consistent with the trial court concluding that Ettie was acting in bad faith as to Kenneth's order to show cause, but not as to her own order to show cause regarding reimbursement for medical costs. Under the circumstances, it was not an abuse of discretion for the court to order Ettie to pay a portion of Kenneth's attorney fees.

Ettie contends the sanction imposed an unreasonable financial burden on her, in contravention of section 271, subdivision (a). In reaching its decision, the trial court noted that it had received a *Keech*[10] declaration from each party, meaning the trial court had evidence regarding Ettie's income and expenses. Ettie does not point to any specific evidence in the record to undermine the trial court's factual finding that the sanction would not impose an unreasonable financial burden on Ettie. Instead, she relies on argument regarding Kenneth's culpability for her current financial condition, with no citation to the record or authority. This is insufficient to overcome the presumption that the trial court's ruling is correct.

Finally, Ettie asks us to order Kenneth to pay her attorney fees and costs. As already discussed, we find no abuse of discretion in the trial court's order regarding attorney fees. Accordingly, we affirm the trial court's denial of Ettie's fee request.

---

[10] *In re Marriage of Keech* (1999) 75 Cal.App.4th 860

DISPOSITION

The order is affirmed. Kenneth shall have his costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

EPSTEIN, P. J.

We concur:

WILLHITE, J.

MANELLA, J.